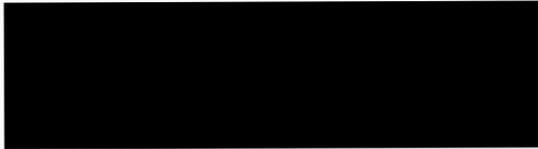


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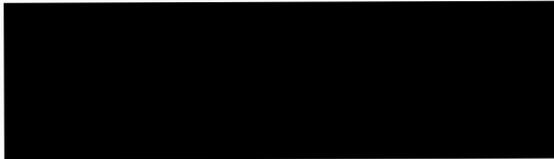
File: WAC 05 113 53915 Office: CALIFORNIA SERVICE CENTER Date: **OCT 04 2006**

IN RE: Petitioner:  
Beneficiary:



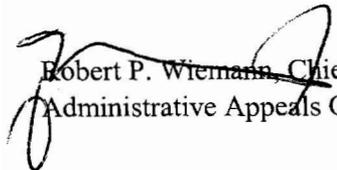
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner was incorporated on July 30, 2003 under the laws of the State of California and operates as an importer and wholesaler of shoes. The petitioner claims to be a subsidiary [REDACTED] located in Zhejiang, China. The beneficiary was previously granted L-1A status for a one-year period, from March 17, 2004 until March 16, 2005, in order to open a “new office” in the United States. The petitioner now seeks to extend the beneficiary’s stay for two additional years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary is employed in a managerial or executive capacity, and claims that the petitioner’s organizational chart demonstrates that he supervises both managerial and professional employees. Counsel asserts that the petitioner provided a comprehensive job description that establishes the beneficiary’s performance of primarily managerial or executive duties. Counsel further references two unpublished AAO decisions to stand for the proposition that the nature and level of sophistication of a petitioner’s business and the scope of the beneficiary’s authority are key factors in analyzing whether a beneficiary is employed in a managerial or executive capacity. Counsel submits a brief in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary’s application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The issue in the present matter is whether petitioner established that the beneficiary will be employed in a managerial or executive capacity under the extended petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant petition was filed on March 15, 2005. In a letter dated March 8, 2005, the petitioner provided the following description of the beneficiary's duties as president of the company:

1. He determines company's polices and establishes business goals. He considers company's marketing capability, financial capability and human resources. He also considers the social and economic environment here in the United States. Based upon all the above, he determines and formulates company's policies: product policy, pricing policy, distribution policy, promotion policy, financial policy and human resource policy.
2. He reviews company's business reports to ensure that the company's objectives are achieved. He also analyses operations to evaluate company's performance and to determine areas of cost reduction and program improvement. He directs financial and budget activities to fund operations and increase efficiency.
3. He makes decision to change the company's business orientation or adjust the business goals. He also decides to adjust company's polices: product policy, pricing policy, distribution policy, promotion policy, financial policy and human resource policy.

4. He reports to the Chinese parent company about the performance of this U.S. company and business opportunities in the United States. He also receives information and instructions from the parent company.

The petitioner submitted an organizational chart depicting the beneficiary as president over a secretary, a sales manager and a merchandiser. The organizational chart shows that the sales manager supervises two sales people and a warehouse operator. The petitioner submitted its California Form DE-6, Quarterly Wage and Withholding Report, for the fourth quarter of 2004. All seven employees identified on the organizational chart are listed; however, the chart indicates that the petitioner had six employees in October 2004, and only five employees in November and December 2004.

On March 22, 2005, the director issued a request for additional evidence. The director instructed the petitioner to submit: (1) a detailed organizational chart listing all employees under the beneficiary's supervision by name and job title and including a brief description of job duties, educational level and annual salaries/wages for all employees; (2) the petitioner's payroll summary and IRS Forms W-2 and W-3 evidencing wages paid to employees; (3) a list of the specific goals and policies the beneficiary has established over the last six months; (4) a list of the specific discretionary decisions that the beneficiary has exercised over the last six months; and (5) a specific day-to-day description of the duties the beneficiary has performed over the last six months.

In a response dated March 30, 2005, counsel for the petitioner re-submitted the organizational chart submitted with the initial petition and provided the requested information regarding the beneficiary's subordinates, which is summarized below:

Secretary (College education, \$15,000 annual salary)

- Answers telephone calls;
- Schedules appointments;
- Prepares notes, correspondence, and reports;
- Records minutes of staff meetings

Sales Manager (College education, \$30,000 annual salary)

- Develops sales plan in accordance with company's strategies and market information;
- Devises and updates pricing policies, promotion tactics and distribution channel, and establishes evaluation system;
- Directs and coordinates sales activities, and reviews sales report;
- Evaluates sales performance, and reports to president.

Salesperson (High school, \$14,400 annual salary with sales commission)

Salesperson (College education \$24,400 annual salary with sales commission)

- Compiles a list of prospective customers
- Calls on regular and prospective customers to solicit orders or talks with customers on sales floor or by phone; displays product and emphasizes salable features; quotes prices

and credit terms and prepares sales contracts; estimates date of delivery to customer, based on knowledge or production and delivery schedules;

- Prepares reports of business transactions and keeps expense accounts.

Warehouse Operator (High school education, \$8.50 per hour, 40 hours per week)

- Receives orders and ships products;
- Keeps record of company's inventory;
- Maintains warehouse tools in good condition;

Merchandizer [sic] (College Education, \$18,000 annual salary)

- **Confers with customers about shoe's specifications, like style, color, material, etc.**
- Sends the specifications and/or samples to the parent company for production.
- Functions as a bridge to exchange information with both the customers and the production facility in China while the products are in the process of production.
- Reports to the president about the foreign company's production schedule and shipping schedule and product customization.

In addition, counsel provided the following "specific day-to-day" description of the beneficiary's duties:

9:00 am

Turn on the computer. First go to . . . to check email. Then go to . . . to check customer's messages. Then go to [the petitioner's] store in Ebay to check online sales. Then go to . . . to check bank transactions. Finally go to OMS system to check company's inventory and receivable.

9:30 am – 10:00 am

Preside over the daily morning meeting and hear the reports:

- Sales Manager reports about customer account plan
- Merchandizer [sic] reports about production schedule and shipping schedule
- Secretary submits documents and checks to president for signature
- Warehouse Operator reports about the number of deliveries and customer name and location

10:00 am -12:00 am [sic]

Sign documents: insurance, Factor, application for payment. Give decisions to issues brought forth by subordinates regarding customer purchase, finance, track company, import/export agent, shipping company, etc.

1:00 pm – 4:00 pm

Think over marketing policy, strategic goals, brand establishment, corporate culture, etc. Talk with visiting customers. Talk with managers and supervisors. Draft report to Chinese parent company.

4:00 pm – 6:00 pm

Make telephone call to Chinese parent company regarding funds, structure of product line, production schedule and business strategies. Make schedule for the next day. Reply emails.

The petitioner provided a list of nine specific discretionary decisions exercised by the beneficiary which included decisions regarding product offerings, attendance at trade shows, and pursuit of contracts and partnerships with selected dealers. Finally, the petitioner submitted a list of goals and policies established by the beneficiary over the previous six months, which included setting goals for expanding the customer network, establishing special pricing structures for key clients, and setting monthly and seasonal sales goals.

The director denied the petition on April 21, 2005, concluding that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity under the extended petition. The director observed that the petitioner does not have any subordinate staff responsible for performing the companies accounting, marketing, budgeting and advertising functions, and determined that the beneficiary himself would be required to perform non-qualifying duties associated with these activities. The director also addressed the petitioner's staffing structure and determined that none of the beneficiary's subordinates had been demonstrated to be managers, supervisors or professionals. The director observed that several of the employees listed appeared to be earning significantly less than their stated salaries. The director concluded that there was insufficient evidence to establish that the beneficiary would perform primarily managerial or executive duties.

On appeal, counsel for the petitioner asserts that the beneficiary is employed in a managerial or executive capacity. Counsel contends that the organizational chart shows that the beneficiary "supervises and controls the work of both managerial and professional employees. This complies with the regulatory definition of managerial capacity." Counsel asserts that the petitioner provided the required detailed job description in support of the petition, re-states the job description, and claims: "Evidently, as President of the company, the beneficiary is performing primarily the duties and that are characteristics of duties performed by a manager or executive."

Counsel also refers to two unpublished AAO decisions, noting that in at least two cases, the AAO has approved L-1A petitions for one-person offices. Counsel asserts that the unpublished decisions demonstrate that the nature and level of sophistication of a petitioner's business and the scope of the beneficiary's authority are key factors in analyzing which petitions are approvable.

Upon review, counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner's initial description of the beneficiary's duties was vague and general and failed to convey an understanding of what tasks the beneficiary performs on a day-to-day basis. For example the petitioner indicated that the beneficiary determines, formulates and adjusts as necessary the company's policies and goals regarding products, pricing, distribution, promotion, finances and human resources. The AAO acknowledges that responsibility for establishing a company's goals and policies is typically considered an executive-level responsibility. *See* section 101(a)(44)(B) of the Act. However, the petitioner did not describe the policies developed, the amount of time the beneficiary allocates to policy-making, or enumerate the specific tasks he performs to develop and implement policies. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner further indicated that the beneficiary "reviews [the] company's business reports to ensure that the company's objectives are achieved," "analyzes operations to evaluate company's performance," and "considers the social and economic environment" in developing policies and goals. The petitioner did not, however, explain the types of reports the beneficiary reviews, or indicate who performs non-managerial duties associated with collecting data or preparing reports. Nor did the petitioner explain what specific tasks the beneficiary performs to "analyze operations" or indicate who performs research regarding the U.S. "social and economic environment. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Finally, the petitioner indicated that the beneficiary "directs financial and budget activities to fund operations and increase efficiency." The AAO notes that the beneficiary is the only employee on the petitioner's staff who is identified as performing any budget or finance-related duties. Therefore, it is reasonable to assume, and has not been shown otherwise, that the beneficiary performs all non-qualifying duties associated with these functions, including duties that would typically be performed by an accountant or bookkeeper. Therefore, the beneficiary's duties associated with the company's budget and financial activities cannot be considered managerial or executive in nature.

Upon review of the vague job description submitted, the director requested a specific description of the duties performed by the beneficiary on a day-to-day basis. The petitioner's response does not assist in establishing that the beneficiary performs primarily managerial or executive duties. The petitioner indicates that the beneficiary checks his e-mail, monitors on-line sales, monitors bank transactions, checks the company's inventory and receivable information, meets briefly with his subordinates, signs documents, "give(s) decisions to issues...regarding customer purchase, finance, truck company, import/export agent, shipping company, etc.," drafts reports for the parent company on a daily basis, "think[s] over marketing policy," talks with visiting customers, drafts a report to the parent company, speaks with the parent company by phone, and responds to e-mails. It is difficult to determine, based on this description, whether the beneficiary's duties are primarily managerial or executive or whether he is involved in the company's day-to-day operational and administrative tasks. The petitioner did not explain with whom or for what purpose the beneficiary is

corresponding by e-mail, or identify the content of the beneficiary's daily written and telephone reports to the foreign entity. It is also not clear what specific managerial or executive tasks the beneficiary performs while "thinking over" marketing policy, or "giv[ing] decisions" on relatively routine matters related to import/export agents and shipping and trucking matters. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Although the petitioner attempted to comply with the director's request for a detailed description of the beneficiary's day-to-day duties, the information submitted is not sufficient to establish that he is engaged in primarily executive or managerial tasks.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Overall, the record suggests that the beneficiary exercises the appropriate level of authority over the U.S. company and performs some duties which would be considered managerial or executive in nature. However, based on the current record, the AAO is unable to determine whether the claimed managerial and executive duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial, non-executive administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

On appeal, counsel asserts that the director erred by finding that the beneficiary would not supervise managers or professionals. Although the beneficiary is not required to supervise personnel, if it is claimed that he is a manager because his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by the subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner indicates that four of the beneficiary's subordinates have a

college-level education, but does not specify whether these employees completed a bachelor's degree or identify whether their studies were in a specific specialty relevant to their respective positions. Regardless, the descriptions of the subordinates' duties, considered in light of the nature of the petitioner's business as a shoe importer and wholesaler, does not establish that the beneficiary's subordinates would be performing in a professional capacity.

Nor has the petitioner shown that any of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Although the petitioner indicates that it employs a "sales manager" who is charged with supervising two salespeople and a warehouse employee, the job description for this employee does not include any supervisory duties other than a statement that she "coordinates sales activities." Moreover, as discussed further below, the record does not establish that the company actually employed both claimed sales representatives at the time the petition was filed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not shown that the beneficiary's subordinate employees are supervisors, professionals or managers, as required by section 101(a)(44)(A)(ii) of the Act.

Counsel further asserts that previous AAO decisions indicate that the nature and level of sophistication of the petitioner's business and the scope of the beneficiary's authority are key factors in analyzing whether a beneficiary is employed in a managerial or executive capacity. It appears counsel is attempting to argue that the director did not take into consideration the reasonable needs of the petitioning entity in making his determination on this issue. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

The petitioner is a one-year-old company operating as an importer and wholesaler of shoes manufactured in China which achieved gross sales in excess of \$627,000 in 2004. The petitioner provided evidence that the company issued over 800 invoices for sales transactions during its first full year of operations. The petitioner claims to employ a total of seven employees. However, the petitioner's Form DE-6 for the fourth quarter of 2004, the quarter immediately preceding the filing of the petition, indicated that only five of the seven employees listed were employed as of the end of 2004. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where

the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, it is difficult to verify which employees were actually working for the petitioner as of March 2005 when the petition was filed. However, it appears that the petitioner's secretary, [REDACTED] who earned only \$357.15 for the fourth quarter of 2004 after receiving \$2,500 in the third quarter of 2004, was no longer with the company.

Further, one of the petitioner's claimed salespersons, [REDACTED], who appears to have been hired in mid-October 2004, received only \$1285.74 for the quarter. The evidence suggests that this employee either worked on a part-time basis or was only employed with the company for a short time. In addition, there are several documents in the record which indicate that this employee was hired to serve as a "general manager," a position that does not appear on the company's organizational chart. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The record confirms the employment of the sales manager and merchandiser throughout the last two quarters of 2004, however, as noted by the director, both of these employees appeared to be receiving salaries that were significantly lower than the salaries stated by the petitioner.

Based on the above, the petitioner has established that it employed the beneficiary as president, a sales manager, one sales representative, a warehouse operator and a merchandiser at the time the petition was filed. The petitioner has submitted evidence that it completed over 800 sales transactions in 2004, including over 250 in the month of December alone. The petitioner reasonably requires employees to perform market research, to market, advertise and sell its products in the United States, to discuss special orders and specifications with customers, to provide customers with samples and respond to product inquiries, to coordinate production with the Chinese manufacture and monitor production and delivery schedules, to interface with international freight forwarders, import/export agents, and domestic trucking and distribution companies, to monitor inventory, to receive deliveries, to coordinate operations in its 9,000 square foot warehouse, to perform day-to-day functions associated with the company's finances and administration, and to perform various other non-managerial, non-executive duties associated with the operation of an import and wholesale business. Based on the record of proceeding, the petitioner has not established that the petitioner's current staff would relieve the beneficiary from engaging in the day-to-day non-managerial functions of the company. Considering the nature of the petitioner's business and its organizational structure, it is reasonable to conclude that the beneficiary is required to perform some portion of the company's day-to-day functions in order to meet the company's reasonable needs.

Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. §§ 1101(a)(44)(A) and (B). As discussed above, the petitioner has not established this essential element of eligibility.

Although the director clearly noted the lack of employees to perform accounting, marketing, and advertising duties and reached the same conclusion regarding the beneficiary's performance of non-qualifying duties, counsel does not address the director's findings on appeal or otherwise attempt to clarify who would relieve the beneficiary from performing these tasks. Instead, counsel repeats the same job description and concludes that it is sufficient to establish that the beneficiary performs duties characteristic of a manager or executive.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Collectively, the lack of specifics in the beneficiary's job description and the absence of subordinates to perform many of the duties that are reasonably required in the daily operation of this type of business raises questions as to how much of the beneficiary's time can actually be devoted to managerial or executive duties. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Furthermore, as noted above, the petitioner bears the burden of documenting what portion of the beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d at 177. Given the lack of these percentages, the petitioner's job description does not demonstrate that the beneficiary will function primarily as a manager or executive.

Counsel further refers to two unpublished decisions in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Based on the evidence of record, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity under the extended petition. For this reason, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.